

ITEM: 6

SUBJECT: Irrigated Lands Conditional Waiver Program

BOARD ACTION: *Consideration of Coalition Group Conditional Waiver Order Adopted June 2006 regarding:*

- *Submittal of Management Plans*
- *Exceptions to Deadline for Adding Participants to Coalition Groups*

BACKGROUND: The Central Valley Water Board adopted a renewal of the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands for Coalition Groups at the 22 June 2006 Board meeting following several hours of testimony and discussion. On 23 June, questions arose concerning the Coalition Group Order adopted the day before regarding:

- a. Should a Management Plan be automatically required from a Coalition Group whenever monitoring shows that the concentration of a monitored constituent exceeds a water quality standard?
- b. What are the conditions under which new participants may be added to a Coalition Group after the 31 December 2006 deadline?

The Board voted to bring these two issues back for further discussion and action at the August Board meeting.

### **MANAGEMENT PLANS**

ISSUES:

The Coalition Group Conditional Waiver requires that when a Coalition Group or Discharger determines that a discharge is causing or contributing to an exceedance of an applicable water quality standard, the Coalition Group or Discharger must promptly notify the Board through a series of reports required by the Monitoring and Reporting Program (MRP):

- a) Exceedance Report – Coalition Group notifies Board that an exceedance of a water quality standard occurred, which is required within five days of receipt of the laboratory analytical report(s) by the Coalition Group. The exceedance must be reported to the Board within one business day by e-mail or fax and must describe the exceedance, follow-up monitoring and analysis, or other actions the Coalition Group may take to address the exceedance.
- b) Communication Report – The Communication Report, which is required within 45 business days of the Exceedance Report, describes the follow-up monitoring and analyses that were conducted, what actions were taken to identify the source of the problem, complete analytical laboratory results, the time schedule to identify and implement a Management Practice Effectiveness and/or other measures to correct the problem, and to submit an Evaluation Report
- c) Evaluation Report – The Evaluation Report, required in accordance with a schedule submitted in the Communication Report, describes the management practice(s) or other measures implemented, target chemical(s), reasons for

implementing the specific practice or measure, and involvement by stakeholders and agencies in developing, implementing, and evaluating the practice or measure.

Under normal circumstances, this series of three reports informs the Board of a water quality problem, planned actions to investigate the problem, and then what was done to correct the problem. This reporting series is built into the MRP and occurs automatically without the need for the Board to request any specific action by the Coalition Group. Although this all proceeds automatically, Board staff can intervene at any point to work with the Coalition Group on the water quality issues.

The Executive Officer can request that the Coalition Group or Discharger prepare a Management Plan to address a water quality issue when a discharge is causing or contributing to an exceedance of an applicable water quality standard. The Management Plan describes what actions are needed to correct the water quality problem. It requires, in part, an evaluation of existing and possible alternative management practices relative to the exceedance, implementation of alternative practices, and a monitoring program to assess the effectiveness of the new management practices.

The issue being examined is whether the Management Plans should be prepared only at the request of the Executive Officer, or whether Coalition Groups or Dischargers should automatically begin preparation of a Management Plan when an exceedance is determined.

An advantage to requiring automatic Management Plans upon determination of an exceedance of a water quality standard is that preparation of a Management Plan can begin more quickly. If the Management Plan is required automatically, the preparation can begin immediately upon the determination that an exceedance occurred. If it is not automatic, the exceedance information must be submitted to Board staff and the Board staff must evaluate the data (in priority with all other staff work) and recommend to the Executive Officer to send a letter requiring preparation of a Management Plan, causing a delay of days or weeks. Regardless of whether or not a Management Plan is prepared, the Coalition Groups are required to proceed with Communication and Evaluation Reports, which do much the same thing as a Management Plan.

There are disadvantages to automatically requiring a Management Plan for each exceedance.

- There would be no threshold for requiring a Management Plan. A single data point slightly above a water quality standard would trigger preparation of a Management Plan, so a great many plans would have to be prepared, submitted and reviewed.
- There are finite resources available to the agricultural industry and the Board, so work must be prioritized. With automatic triggering of potentially a large number of Management Plans, resources needed to deal with serious water quality issues would be diluted by Management Plans for lower priority water quality issues.
- The submittal of a Management Plan would duplicate the

requirement that already exists in the MRP whenever an exceedance occurs – that is, Exceedance, Communication, and Evaluation Reports. Adding the requirement for automatic Management Plans for each exceedance of a water quality standard would not add value to the existing reporting requirements.

- Determining the need for and type of response to an exceedance is complex, much more than a “Yes/No” to the question “Did the sample results exceed the water quality standard?” It would be difficult to fully define in the Order the criteria for triggering a Management Plan.

For instance, would a new exceedance in a water body trigger a new Management Plan if a Management Plan is already in progress on another water body for the same constituent? The answer is “it depends.” Are both water bodies sufficiently close together, and have similar hydrologic and land use characteristics that the causes and potential corrective actions are likely the same, so that a single Management Plan is warranted?

In lieu of an automatic trigger requiring Management Plans, the Board could direct the Executive Officer to make Management Plans a high priority. This would allow staff to look at all factors associated with an exceedance and set priorities for the water quality issues to be pursued.

We need not wait for new data and new exceedances to require Management Plans, a concern expressed during the Delta Diazinon TMDL Hearing. There are clearly a few significant water quality issues for which Management Plans can be required immediately. These include constituents for 303(d) listed water bodies, diazinon, chlorpyrifos, salt, and fecal coliform bacteria.

#### **Recommendation Regarding Management Plans:**

It is recommended that the language in the adopted Order remain unchanged, that the submittal of Management Plans not be automatic but should be required only upon request of the Executive Officer. Other automatic reporting can effectively deal with the vast majority of monitoring exceedances. The Board can affirm its direction to the Executive Officer that follow-up on water quality exceedances, including requiring submittal of appropriate Management Plans, is a high program priority.

If the Board determines that Management Plans should be submitted automatically, the following conditions are recommended to prevent preparation and submission of many, essentially duplicative Management Plans:

- One Management Plan may be submitted for multiple exceedances of the same constituent within a water body.
- Separate Management Plans need not be prepared for subsequent exceedances for a constituent in a water body for which a Management Plan is being or has been prepared, unless the Management Plan recommendations have been fully implemented and exceedances are continuing to occur.
- A Management Plan may address exceedances of a constituent in more than one water body if the Coalition Group demonstrates

that the water bodies and land uses are sufficiently similar that the same causes and corrective actions will likely apply to all water bodies to which the Management Plan will apply.

- A Management Plan may address multiple constituents in one or more water bodies if the Coalition Group demonstrates that the constituents are sufficiently similar that the same causes and corrective actions will likely apply to all constituents to which the Management Plan will apply.
- Triggers for exceedances can be developed in the MRP, below which Management Plans will not be automatically required.
- Management Plans shall be submitted within 90 days of determination of an exceedance. Determination of a water quality standard exceedance shall occur no later than five (5) business days after receiving the laboratory analytical report or other notification from the laboratory of the detection(s).

As an alternative to automatically requiring Management Plans for all exceedances, the Board could determine that Management Plans would be submitted automatically for only certain types of exceedances. One option would be exceedances for constituents on the 303(d) impaired water body list for the water body that was monitored. This would limit the number of Management Plans that would be automatically triggered to water quality impairments that are already identified. The conditions suggested above to limit the proliferation of Management Plans would also apply to this alternative.

As another alternative, the Board could require that Coalition Groups submit Management Plans by a specified date for water bodies and/or areas of water quality concern within the Coalition Group boundary. Areas of water quality concern would include water bodies on the 303(d) list and those where existing sampling data show toxicity and/or exceedances of water quality standards. The Coalition Group could be required to submit a proposed list of these water bodies for discussion and concurrence of staff, and then prepare Management Plans for each of them according to an agreed-upon schedule. Such a requirement would result in Management Plans for areas already known to have water quality problems, with Management Plans for future exceedances to be at the request of the Executive Officer.

### **EXCEPTIONS TO DEADLINE FOR ADDING PARTICIPANTS TO COALITION GROUPS**

A concern of the Central Valley Water Board, Coalition Groups and environmental groups is the low levels of participation in some Coalition Groups. It is unclear the extent to which a low percentage of participation in a Coalition Group represents:

- Dischargers who are failing to join a Coalition Group or comply with the Water Code in some other manner, or
- Farmers who have no discharge of wastewater to surface water, and therefore have no need to join a Coalition Group or otherwise comply with the Water Code.

Dischargers not complying with the Water Code are in violation of the

law, are likely to be discharging more pollutants than dischargers complying with the law, and are not providing technical and financial support to the Coalition Group's efforts to improve water quality. At this time there is no penalty for failing to join a Coalition Group. If a Discharger not complying with the Water Code is found, the discharger can simply sign up for the Coalition Group.

The Board voted to prohibit the addition of new participants to Coalition Groups after 31 December 2006. At the time of the vote, no exact wording concerning this matter had been developed for review by the Board members or the public, and there was no opportunity for public discussion of the proposal.

Such a prohibition could provide an incentive for Dischargers to join a Coalition Group rather than be limited to the other options available to attain compliance with the Water Code: applying for coverage under the Individual Discharger Conditional Waiver, or filing a report of waste discharge and obtaining individual waste discharge requirements or an individual conditional waiver. Such a strict prohibition may, however, preclude any number of justifiable additions of new Coalition Group participants after 31 December 2006. Such reasons can include:

- Transfer of property to a new owner.
- Expansion of irrigation to previously non-irrigated lands after 31 December 2006, or other management or physical change that "creates" a new discharger that needs to comply with the Water Code.
- Transferring participation from an existing Coalition Group to a newly formed coalition. Examples include the recent transfer of participants from the dissolved Root Creek Coalition, or (as a theoretical example) transfer from a watershed Coalition Group to a commodity-specific Coalition Group formed in the future, or if the Water Board withdraws approval of a Coalition Group and a new Coalition Group is formed to represent dischargers in the area.

### **Recommendation Regarding Exceptions to Deadline for Adding Participants to Coalition Groups**

The following language is recommended:

"After 31 December 2006 no additional participants may join any Coalition Group unless one or more of the following conditions exist:

- a. The subject owner and property were not a "discharger" qualifying for coverage under the Coalition Group Conditional Waiver prior to 31 December 2006, but management or physical changes on the subject property, or on properties between the subject property and receiving surface waters to which the wastewater drains, have been modified such that the subject owner and property are now a "discharger" and qualify for Coalition Group membership.
- b. The owner/property were participants in one Coalition Group or covered under the Individual Discharger Conditional Waiver Order prior to 31 December 2006, but are transferring their participation to another Coalition Group.
- c. Coalition Group boundaries change or a new Coalition Group is

formed, such that an area not previously covered by any Coalition Group now is covered, so growers in those areas should be able to join the new or revised Coalition Group.

- d. Transfer of property to a new owner.
- e. Other situations reviewed and approved by the Executive Officer on a case-by-case basis.

After **31 December 2006**, all new Coalition Group participants must be approved by the Executive Officer."

RECOMMENDATION:

Adopt the proposed Resolution to amend Attachment B of the Coalition Group Conditional Waiver Order to incorporate the above recommendations.

Mgmt. Review \_\_\_\_\_

Legal Review \_\_\_\_\_

3 / 4 August 2006

Central Valley Regional Water Quality Control Board

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